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FEDERAL COMMUNICATIONS COMMISSION  
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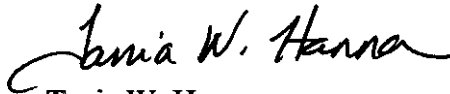
December 9, 2002

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Vistrionix, Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

Dear Ms. Dortch:

Enclosed please find the comments of NCS Pearson, Inc. in CG Docket 02-278. Please let me **know if** you have any questions.

Sincerely,

  
Tania W. Hanna

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DEC - 92002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )

Rules and Regulations Implementing the )  
Telephone Consumer Protection Act of 1991 )

CG Docket No. 02-278

COMMENTS OF NCS PEARSON, INC.

NCS Pearson, Inc., ("NCS Pearson") hereby respectfully submits its comments to the Federal Communications Commission ("FCC" or "Commission") in the above captioned proceeding.<sup>1</sup>

NCS Pearson is an independent third-party data management services company that works with federal, state, and local government agencies to improve service quality, streamline operations, and reduce costs. It provides technology-based solutions that speed the delivery of information, benefits, and services to a diverse set of constituents. NCS Pearson has been an active participant in the Federal Trade Commission's ("FTC's") efforts to develop a national do-not-call database.<sup>2</sup> In addition, NCS Pearson is the provider of the Minnesota state do-not-call database. As such, NCS Pearson has an interest in the rules and regulations proposed by the Commission with regard to the development of a national do-not-call database, as well as proposed amendments to its existing rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA").

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<sup>1</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, CG Docket No. 02-278 (rel. Sept. 18, 2002) (hereinafter "NPRM") at para. 52.

<sup>2</sup> See *Telemarketing Sales Rule. Notice of Proposed Rulemaking*. Federal Trade Commission, 67 Fed. Reg. 4492 (Jan. 30, 2002).

**I. The technology is available today to allow for the creation and ongoing maintenance of a national do-not-call database.**

***A. There has been an increase in technological innovation.***

The Commission has requested that parties comment on whether technological innovations in computers and software programs mitigate concerns about the costs, accuracy, and privacy issues involved in establishing a national do-not-call database.<sup>3</sup> There has been a substantial increase in general technological innovation in computer technologies in the last decade. In general, computing and storage capabilities and networking technologies have grown astronomically in the last 11 years since the adoption of the TCPA.

For example, microprocessors are responsible for running the programs that are used in practically every computing application that exists today, including the programs used to support database applications such as the national do-not-call registry. Innovation can be quantified by measuring computing speed. Computing speed is commonly measured by assessing the computer's ability to process in "million instructions per second" ("MIPS"). MIPS is used to compare how fast a microprocessor can process an instruction of code. A common microprocessor used in home computers produced in 1992 was rated at 50 MIPS. A common microprocessor that is used in new home computers today is rated at over 2,500 MIPS. This represents a 50 fold increase in computing power alone in a 10 year period:

Computer memory, which is used to store the programs and data for software applications, has dramatically increased in capacity and decreased in price. In 1991-1992

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<sup>3</sup> NPRM at para. 52.

<sup>4</sup> Berghell Associates, *Evolution of the Intel Microprocessor*, White Paper, Steve Gilheany & Intel Museum.

**128** megabytes (million bytes) of random access memory cost \$2,500. Today, the *same* amount of memory costs **\$35**.

Computer disk storage technologies have undergone a similar revolution by achieving a 40 fold increase in capacity in the last five years. In that same period, storage costs went from an average of \$78 per gigabyte (“GB”) to \$2 per GB with an annual decrease of over 50%. Disk capacities grew at a rate of 100% in 2001 **alone**.<sup>5</sup>

The FTC has estimated that up to 40% of all residential telephone lines will want to register their phone numbers in the do-not-call **registry**.<sup>6</sup> Using this as an assumption, NCS Pearson estimates that the consumer database would range in size between **3.8** and 8.1 gigabytes of disk space.’ Today, this is viewed as a relatively small database when it is understood that many commercially available home computers sold today have larger disk drives.

The FTC intends to utilize a high degree of automation to collect consumer registration information from the public for the proposed do-not-call database.’ The FTC specifically mentions the potential use of “interactive voice response” (“IVR”) technology to collect consumer data. In addition to computing platforms, IVR platforms have also had an exponential increase in technology evolution since 1991. In general, there has been an increase in the number of IVR ports that can be supported on a single platform, which in turn has resulted in a lower cost per IVR port to run the platform.

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<sup>5</sup> Gartner Group, *Alchemy and Rigorous Science: The Evolution of Hard Disk Drives*, 23 September 2002, John Monroe.

<sup>6</sup> FTC Rulemaking Workshop, Session 1, June 5, 2002, page 130, comment from Mr. David Torok.

<sup>7</sup> The FCC published “Trends in Telephone Service” (May 2002), a figure of 126.7M total residential lines is estimated at the end of 2000. Assuming a 3% line growth/year, a total of 134.4M residential lines are estimated for year-end 2002. A single database record for a consumer telephone number is estimated to be between 70 and 150 bytes long.

<sup>8</sup> See FTC Privacy Act Notice, 67 Fed. Reg. at 8986.

Also, expanded memory capabilities allow storage of more complex voice scripts. In addition, there have been many advances in the maintainability aspects of IVR technology. These include hardware redundancy and the ability to “hot swap” components without disabling the entire platform

***B. The do-not-call database would be manageable and feasible to maintain.***

NCS Pearson has successfully implemented several applications on the **same** scale as the proposed national do-not-call registry. **As** an example, through the U.S. Department of Education, NCS Pearson provides the database, system and web application for the Free Application for Federal Student Assistance (“FAFSA”) that is used to provide federal aid to college students across the country. During the current academic year, this NCS Pearson system has processed financial aid information for more than 10.3 million applicants. Each applicant data file contains over 1,000 data elements, bringing the current-year database size to more than 12 billion data items. In comparison, NCS Pearson estimates that 53.76 million subscribers would register their phone numbers on the national do-not-call database. Each consumer data record is estimated to consist of as few as **6** data elements, which would require the national do-not-call database to manage a total of 323 million data items. As this comparison shows, there are other applications of this magnitude that have been successfully deployed to serve the public.

Telemarketers will need to download periodically potentially large amounts of data if the rules require them to participate in the national do-not-call registry. The national do-not-call database, as envisioned by the FTC, will be a web-enabled application. Telemarketers will be able to register, pay and download the data that they

require through the Internet in a secure fashion using commercially available web-based software. Even extremely small telemarketers can cost-effectively gain access to the national do-not-call database using the Internet as a vehicle. In **1991** the “world-wide-web” was not available to the public for general access to these types of applications,” and therefore was not an available tool for use in the initial evaluation of the do-not-call registry.

The Commission has noted in the NPRM that “nearly one-fifth of all telephone numbers change each year” and that the “database would require frequent updates to remain accurate.”” In order to maintain an accurate database, it is extremely important that disconnected numbers can be identified and removed efficiently. In **1991**, the only source of telephone number data that was generally available to the open market was the White Pages telephone books. There are many problems with using data from the White Pages telephone books. Information from the White Pages is quickly out of date, there is no record of unlisted/unpublished telephone numbers, and the data could be as much as a year old. Today, as a part of local competition, telephone companies **are** required to offer access to telephony databases.” These telephony databases are offered as “unbundled network elements” and include the Line Information Database, Caller Name Database and Directory Listing services. **All** of these data sources provide necessary information for the do-not-call application and ensure the highest degree of accuracy of the data.

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<sup>9</sup> See FTC Privacy Act Notice, 67 Fed. Reg. at 8986.

<sup>10</sup> The “world-wide web” was released by the European Council for Nuclear Research (CERN) in 1992.

<sup>11</sup> NPRM at para. 51.

<sup>12</sup> 47 C.F.R. § 51.319(e)(2) and 47 C.F.R. § 51.319(f).

***C. The costs of the national do-not-call database in 2002 should be significantly lower than originally estimated.***

In 1991, commenters estimated that the start-up and operational costs for a national do-not-call database in the first year ranged from \$20 million to \$80 million.<sup>13</sup> Based upon our understanding of the FTC's contemplated national do-not-call database, NCS Pearson estimates that the cost of the system should be substantially below the \$20 million to \$80 million estimate cited by the Commission in the TCPA Order. Finally, costs to regional telemarketers can be mitigated if the FTC adopts user fee rules for regional telemarketers so that they pay only for the data that they actually need.<sup>14</sup>

**II. Limiting the national do-not-call database registry for a two-year trial period is inefficient.**

NCS Pearson would be concerned if the FCC or FTC were to implement the establishment of a national do-not-call database for a two-year trial period. Such a strategy would serve unnecessarily to increase the overall cost of the do-not-call registry to the public. The public interest warrants that the Commission takes an affirmative stance on this issue. As the Commission has noted, the telemarketing industry is considered the single largest direct marketing system in the United States, representing 34.6% of the total U.S. sales attributed to direct marketing.<sup>15</sup> Moreover, during a two-year time frame, the Commission has received over 26,900 consumer inquiries regarding their rights under the TCPA and over 11,000 complaints about telemarketing practices.<sup>16</sup> Given the volume of inquiries and complaints, the creation and permanent maintenance

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<sup>13</sup> *Rules and Regulations implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752 (1992) ("TCPA Order") at para. 14.

<sup>14</sup> FTC User Fee Notice of Proposed Rulemaking (NPR), 67 Fed. Reg. 37364.

<sup>15</sup> NPKM at para. 7.

<sup>16</sup> *Id.* at para. 8.

of a national do-not-call registry is warranted. *If* the operation were to be shut down and later restarted, there would be additional costs that would be incurred. We recommend against the two-year trial period as an inefficient use of resources and potentially harmful to the public interest.

Furthermore, a trial application is typically performed on applications where the requirements are not clearly understood. In this case, the do-not-call registry application has been implemented numerous times on the state level, which provides substantial guidance to implementing a national database.

**III. The national do-not-call database can be managed to preserve the security of individuals.**

Both the FCC and the FTC have expressed concerns that consumer proprietary information be protected by the do-not-call registry provider.” NCS Pearson recommends limiting the amount of information that is stored in the do-not-call registry. The information stored could be as simple as the telephone number and several dates (such as original storage/update date, expiration date, etc.). In addition, there are numerous “commercial off the shelf” (“COTS”) information and physical security mechanisms available today to ensure that the system and its inherent data are adequately secured. Since the advancement of the commercialization of the Internet, there have been many security innovations. These innovations have evolved into a multi-layer security approach used by many applications today. Software solutions take advantage of network layer security (by using network “firewalls,” network router tables, and secure socket layer (“SSL”) web-based technology), system level security (operating system or database level security and database encryption) and application level security (special



security mechanisms specifically written into the software). Thus, security concerns relating to the personal information provided to the national do-not-call registry are mitigated given the advances in security technology.

**IV. Inform subscribers of their rights should be coordinated with the national do-not-call database provider.**

Experience with the Minnesota state do-not-call system and other state level databases show that consumers are extremely eager to take advantage of the do-not-call systems.<sup>18</sup> In order to ensure that registration of the system is adequately balanced throughout the rollout period of the system, it is desirable to have a regional rollout.<sup>19</sup> In Section 227(c)(3) of the Communications Act ("Act") there is a requirement that each common carrier providing telephone exchange service should inform subscribers of the opportunity to object to receiving telephone solicitations.<sup>20</sup> NCS Pearson proposes that any plan that is developed to inform subscribers of the opportunity to register their telephone numbers in the do-not-call registry by the subscriber's common carrier be coordinated with the do-not-call registry vendor. Such coordination is critical in ensuring the integrity of the database registry and could be as simple as requiring the common carrier to distribute a circular in the residential phone bill identifying a specific span of

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<sup>17</sup> *Id.* at para. 59; FTC Privacy Act Notice, 67 Fed. Reg. at 8986.

<sup>18</sup> **Particularly** in states that have a **small** or **no** consumer registration fee, there has been a very high rate of registrations in the state do-not-call databases. Within five days after do-not-call registration was initiated in Minnesota, 625,135 telephone numbers were registered. In addition, data from Colorado shows that 37,000 households in Colorado registered for the state do-not-call list on the first day. *See* <http://www.callcompliance.com/cci/jsp/statelist.html> According to WISC-TV in Madison, WI, the state of Wisconsin fielded 11,000 phone calls from residents signing up for the new "do-not-call list" during the **first two hours** the number was open in October 2002.

<sup>19</sup> In comments to the FTC, NCS Pearson has recommended that the geographic rollout be staggered over a finite period of time.

<sup>20</sup> 47 U.S.C. § 227(c)(3)(B).

dates (based upon the state of residence) during which the consumer may register in the do-not-call registry and the method for registration.

In addition to the initial rollout, continued efforts should be undertaken to inform the public of the national do-not-call database. For example, the do-not-call registration telephone number and related information should be included in new customer information packets supplied to consumers when they order new residential telephone service. There are additional means for keeping the public informed, such as through the publishing of the do-not-call registration telephone number in the government section of the White Pages and Yellow Pages phone books.

**V. The FCC and the FTC should agree on a single set of data collection, verification and tracking mechanisms for the do-not-call database.**

The Commission and the FTC should coordinate to ensure that the Commission's current rulemaking does not unduly delay the roll-out of the national do-not-call database proposed by the FTC. The FTC has found that the creation of a national do-not-call database serves the public interest and has moved forward towards creating such a database. The Commission's current rulemaking may take several years to finalize. NCS Pearson strongly believes that the FCC's rulemaking should not hinder the FTC's attempt to develop a national do-not-call database. Instead, the FTC should proceed expeditiously in creating the national do-not-call database despite the FCC's pending rulemaking.

Upon completion of the FCC's rulemaking, the FTC and FCC would be in a position to coordinate the implementation of the FCC's requirements, if any, in the FTC's do-not-call database. In the event that the FCC were to adopt rules creating a national

do-not-call database, NCS Pearson believes that the creation of a *single* national do-not-call registry best serves the public interest. Having two competing national do-not-call registries may confuse consumers as well as telemarketers and seems duplicitous. However, a single national do-not-call database requires that the FTC and FCC closely coordinate their efforts. Such coordination should include the following: 1) identification of the specific data to be stored in the consumer's records; 2) the methods on which the registration should be validated; 3) and tracking mechanisms for both consumer and telemarketer access. Agreeing on these items allows the system to be built in a common fashion based upon both the FCC's and the FTC's requirements. Such coordination would be fostered by the Commission deferring to the FTC's administration of a single contract with the do-not-call database administration vendor to ensure that communication of the requirements is uniform and contract administration is efficient and consistent. Once there is a unified system that contains consumer registration data, the policy regarding the application of the data to different classes of users can be specified individually by the FCC and the FTC based upon their jurisdictions.

**VI. Any private right of action should be limited in such a way as to exempt the national do-not-call database vendor from such actions.**

Section 227 of the Act creates private right of actions against the telemarketers.” Specifically, the statutory language provides consumers with an opportunity to file suit for any violation of the auto-dialer or prerecorded voice message prohibitions and for any violation of the guidelines from telephone solicitation.<sup>21</sup> With regard to telephone solicitations, the FCC has implemented rules that provide that a consumer may also file

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<sup>21</sup> 47 U.S.C. §§ 227(b)(3); 227(c)(5).

<sup>22</sup> *Id.*

suit in state court if he or she has received more than one telephone call within any 12-month period by or on behalf of the same company in violation of the guidelines for making telephone solicitations.<sup>23</sup> The NPRM asks whether the FCC should clarify the circumstances in which a consumer may file suit.<sup>24</sup>

The legislative history of section 227 and the original TCPA Order provide that Congress's intent was that the private right of action be provided to consumers against telemarketers, not the database administrator of the national do-not-call list.<sup>25</sup> Consistent with this legislative history, it would be appropriate for the FCC to affirm that a consumer has a private right of action against a telemarketer if the telemarketer makes a call to a consumer whose number is in the national do-not-call database. Such private right of action should not extend to the database administrator. The FCC should expressly confirm that neither consumers nor telemarketers have a private right of action under section 227 of the Act to file suit against the national do-not-call database administrator. Such clarification of the private right of action under section 227 is appropriate to ensure that legislative intent is maintained and that all parties are cognizant of their rights and responsibilities.

## **VII. Conclusion**

NCS Pearson believes that the creation of a national do-not-call database will serve important public interest goals. Because a national do-not-call database is now technologically feasible and could be implemented cost effectively, the time is ripe to implement this database. The FCC rules implementing the national do-not-call database

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<sup>23</sup> TCPA Order, 7 FCC Rcd at 8780 at para. 55; see also 47 U.S.C. § 227(b)(3).

<sup>24</sup> NPRM at para. 47.

<sup>25</sup> Telephone Consumer Protection Act of 1991, S. 1462, 102<sup>nd</sup> Cong. § 227 (1991); see also TCPA Order.

should be consistent with the FTC's actions and ensure that subscribers are well-informed of their rights and that telemarketers **are** well informed of their obligations.

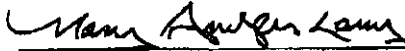
Respectfully submitted,

NCS PEARSON, INC.



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